In the High Court of Judicature at Madras

Dated: 22.02.2006

Coram

The Honourable Mr. JUSTICE P.D.DINAKARAN
and
The Honourable Mr. JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.209 of 2006 and 1099 of 2004

Commissioner of Income Tax,
Chennai. .... Appellant in TC(A)209/2006

Commissioner of Income Tax-I
Chennai. .... Appellant in TC(A)1099/2004

Vs.

M/s. First Leasing Company of India Ltd.,
749 Mount Road, Chennai - 600 002. .... Respondent in both Tcs

Tax Case Appeals filed under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal 'A' Bench dated 30.08.2005 in ITA No.1168/Mds/97 for the assessment year 1993-94. and 'C' Bench dated 19.7.2004 in ITA No.351/Mds/98 for the assessment year 1994-95 against the order dated 21.3.97 in I.T.Apeal No.81/96-97 on the file of the Commissioner of Income - Tax (Appeals)-II Madras-34 for the assessment year 1993-94 in G.I/P.A.No. 47-065-CY-3961 and against the order dated 29.12.1997 in IT/WT/GT/Appeal.No.143/97-98 on the file of the Commissioner of Income Tax (Appeals) Madras-34 for the assessment year 1994-95 in G.I/P.A.No.47-055-CV-3961.

Against the assessment order dated 29.3.1996 in PAN, GIR.No.47-065-CY-3961/93-94 of the Assistant Commissioner of Income Tax, Central Circle II (5) Madras-34 for 1993-94.

Against the assessment order dated 31.3.97 in PAN.GIR.No.47-055-CV-3961 for assessment year 1994-95 by the Assistant Commissioner of Income Tax, Central Circle I(5), Madras-34.

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For Appellant : Mrs. Pushya Sitaraman

For Respondent: Mr. V.S.Jayakumar

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J U D G M E N T

(Judgment of the Court was delivered by P.D.DINAKARAN,J)

Mr. V.S.Jayakumar, learned counsel takes notice on behalf of the respondent.

The above tax case appeals are directed against the orders of the Income Tax Appellate Tribunal dated 30.08.2005 and 19.07.2004 made in ITA No.1168/Mds/97 and ITA No.351/Mds/98 for the assessment years 1993-94 and 1994-95.

2. The brief facts are as follows:

The Revenue is the appellant. The relevant assessment years are 1993-94 and 1994-95. For the said assessment years, the assessee claimed deduction of amount paid towards provision for premium payable on redemption of debentures in future years. The assessing officer disallowed the same and also disallowed the amount claimed on the debenture issue expenses. Aggrieved by the order of the assessing officer, the assessee preferred appeals before the Commissioner of Income-Tax (Appeals), who confirmed the order of the assessing officer relying on the earlier orders in the assessee's own case for the assessment year 1988-89. On further appeals before the Income Tax Appellate Tribunal at the instance of the assessee, the Tribunal allowed the appeals following the assessee's own case and also the decision of the Supreme Court in the case of Madras Industrial Investment Corporation Ltd. V. Commissioner of Income Tax reported in 225 ITR 802. Hence, the present appeals by the Revenue raising the following substantial questions of law:

T.C.(A) Nos.209/06 and 1099/04:

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the premium payable on actual redemption of debentures in future years is to be spread over and part of it is allowable as a deduction in this Assessment year?

T.C.(A) No.209/06:

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the expenditure incurred for issue of debentures in earlier years is to be spread over and allowed as a deduction in this year?

3. While the first question is related to the deduction of the premium payable on actual redemption of debentures and spreading over the period of the debentures, the second question relates to the deduction of the expenditure incurred for issuing debentures and which

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is to be spread over the period of debentures and thus both are inter-related. Hence, both the questions are dealt with jointly.

4.1. It is a settled law that the discount on debenture is a revenue expenditure and hence the same is deductible under Section 37 of the Income- Tax Act.

4.2. It is apt to refer Section 37 of the Income Tax Act, which reads as follows:

> 37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession."

5.1. The questions whether the discount on debenture is the revenue expenditure or capital expenditure and the same could be spread over and that whether the expenditure incurred for the issue of debenture in earlier years has to be spread over and allowed as a deduction in future years came for consideration before the Apex Court in the case of Madras Industrial Investment Corporation Ltd. V. Commissioner of Income Tax reported in 225 ITR 802, wherein the Apex Court observed that when a company issues debentures at a discount, it incurs a liability to pay a larger amount than what is borrowed. The liability to pay the discounted amount over and above the amount received for the debentures, is a liability which has been incurred by the company for the purposes of its business in order to generate funds for its business activities. The amounts so obtained by issue of debentures are used by the company for the purposes of its business. Hence, the liability to pay the discount would therefore be a revenue expenditure.

5.2. The issue whether a particular expenditure should be treated as capital expenditure or revenue expenditure incurred for the purpose of business must be determined on consideration of all facts and circumstances of the case and by application of the principles of commercial trading, in the context of business necessity or expediency. If the outgoing or expenditure is so related to the carrying on, or conduct of the business, that it may be regarded as an integral part of the profit-making process and not for acquisition of an asset or a right of a permanent character, the possession of which is a condition of the carrying on of the business, the expenditure may be regarded as revenue expenditure. Any liability incurred for the business of obtaining a loan would be revenue expenditure.

6. Then the question arises whether the deduction of such revenue expenditure could be spread over. The revenue expenditure, which is

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incurred wholly and exclusively for the purpose of business, must be allowed in its entirety in the year in which it is incurred and it cannot be spread over a number of years, even if the assessee has written it off in his books over a period of years, but it was held by the Apex Court in the decision cited supra that issuing debentures is an instance where, although the assessee has incurred the liability to pay the discount in the year of issue of debentures, the payment is to secure a benefit over a number of years, there is a continuing benefit to the business of the company over the entire period, and the liability should, therefore, be spread over the period of the debentures.

7. In the instant case, the issue is with reference to the allowability of premium payable on actual redemption of debentures as deduction in future years.

8. A Division Bench of this Court in the case of Commissioner of Income-tax V. Tube Investments of (India) Ltd. reported in 261 ITR 753, held that pro-rata annual allocation of premium payable on redemption of debentures allowed by the Tribunal is in accordance with the law laid down by the Apex Court in the case of Madras Industrial Investment Corporation Ltd. V. Commissioner of Income Tax reported in 225 ITR 802.

9. Similar view was also taken by the Calcutta High Court in the case of National Engineering Industries Ltd., V. C.I.T. reported in 236 ITR 577, wherein it has been held as follows:

> There is no distinction between a discount and a premium. The result in both is that something over and above the face value and the specified interest is paid, the accounting procedure in one case being by way of a preliminary deduction from the mentioned amount, and the accounting procedure is the other case being an addition at the end over the prescribed and mentioned face value amount. The extra premium is to be spread over all the years which are occupied between the date of issue and the date of ultimate redemption.
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> (emphasis supplied)

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10. Applying the ratio laid down in the case of Madras Industrial Investment Corporation Ltd. V. Commissioner of Income Tax reported in 225 ITR 802 and in the context of the ratio laid down in the case of National Engineering Industries Ltd., V. C.I.T. reported in 236 ITR 577, where under it is held that there is no distinction between discount and premium, the discount on debentures as well as the premium payable on actual redemption on debentures in future years and the expenditure incurred for issue of such debentures are all held to be the revenue expenditure, entitled to be spread over the period of

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debentures and consequently, allowable as deduction in a particular assessment year.

11. For the foregoing reasons, we do not see any question of law much less substantial question of law arises for consideration. Hence, finding no reason to interfere with the orders of the Tribunal, both the appeals stand dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,Income Tax Appellate Tribunal
   Rajaji Bhavan, Besant Nagar, Chennai-90.
2. The Commissioner of Income Tax (Appeals-II), Chennai-34
3. The Assistant Commissioner of Income-tax, Central Circle-I(5),
   Madras-600 034.

one cc to Mr.V.S.Jayakumar, advocate SR.No.8163.

two ccs to M/s.Pushya Sitaraman, Sr.SC for IT Cases SR.Nos.8353,8355

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